

UNITED STATES DISTRICT COURT  
DISTRICT OF MINNESOTA

**In re: BAIR HUGGER FORCED AIR  
WARMING DEVICES PRODUCTS  
LIABILITY LITIGATION**

\*  
\*  
\*  
\*

**MDL No. 15-2666 (JNE/FLN)**

**This Document Relates To:**

\*  
\*

**Matthew Scott Lowry vs. 3M Company, et al,\*  
No. 0:16-cv-02480 (JNE/FLN)**

\*

\*\*\*\*\*

**NOTICE OF RETRACTION OF LEXECON WAIVER**

Comes now the plaintiff in the above-entitled cause and files herewith their Notice of Retraction of *Lexecon* Waiver and states as follows:

Due to the Court's ruling in the *Gareis* matter choosing the law of a plaintiff's state of residence rather than Minnesota law as the substantive law to be applied to plaintiffs' claims, amongst other rulings, which have collectively resulted in a material difference in the posture of the case, Plaintiff(s) in the above captioned litigation hereby rescind their waiver of their rights under *Lexecon v. Milberg Weiss Bershad Hynes & Lerach*, 523 U.S. 26 (1998). Plaintiff(s)'s waiver was made without consideration. Although Plaintiff(s)'s case is in the general randomly selected bellwether pool, it has not been selected as a trial pick and no additional motion practice or discovery has occurred to move the case forward. Further, Defendants have never affirmatively waived *Lexecon*, and the Court's choice of law ruling provides no benefit to Plaintiff(s) from the application of Minnesota law rather than the law of their state of residence.

Dated: June 7, 2018

Respectfully submitted,

s/Daniel S. Haltiwanger

Daniel S. Haltiwanger

dhaltiwanger@rpwb.com

Richardson, Patrick, Westbrook  
& Brickman, LLC

Post Office Box 1368

Barnwell, SC 29812

Telephone 803-541-7850

Facsimile 803-541-9625

*Attorney for Plaintiff*